

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

IN RE INTEL CORP. MICROPROCESSOR
ANTITRUST LITIGATION

MDL No. 05-1717-JJF

PHIL PAUL, on behalf of himself and all others
similarly situated,

C.A. No. 05-485-JJF

Plaintiffs,

CONSOLIDATED ACTION

v.

DM-5

INTEL CORPORATION,

Defendant.

**DEFENDANT INTEL CORPORATION'S RESPONSE TO FRY'S ELECTRONICS'
RULE 53(g) OBJECTIONS TO THE SPECIAL MASTER'S REPORT AND
RECOMMENDATION REGARDING ALLOCATION OF FEES IN DM-5**

Defendant Intel Corporation ("Intel") respectfully submits this brief response to the Fed. R. Civ. P. 53(g) objections that Fry's Electronics ("Fry's") filed regarding the Special Master's allocation of fees in connection with Discovery Matter No. 5 (DM-5). (*See* D.I. 695 in md-1717). In those objections, Fry's urges the Court to overrule the Special Master's Report and Recommendation sanctioning Fry's in the amount of \$39,618.21 for its conduct in DM-5. Intel takes no position on the merits of the recommended sanctions; however, it does take issue with the concluding sentence in Fry's' brief that urges the Court to "order that the Special Masters [sic] fees [in DM-5] are to be allocated solely among the parties (Class Plaintiffs, Intel and AMD)." (*Id.* at 10).

There is no order in place that the Special Master fees in *all* discovery disputes should be allocated among *all* of the parties. Nor should there be. Discovery Matter No. 5 involved a motion filed by Interim Class Counsel to compel Fry's to respond to a subpoena that Interim Class Counsel served on Fry's.¹ Consequently, Intel had no substantive involvement in the dispute. Intel did not submit legal positions on any of the issues presented to the Special Master on the merits of the discovery dispute.² Further, because Intel was not a party to this dispute, it did not participate in any of the meet and confers, and Fry's conditioned its agreement to those meet and confers on a commitment by Interim Class Counsel that no information disclosed at those meetings would be shared with anyone, including Intel. (*See* May 1, 2007 Tr. at 99-100 [D.I. 551 in md-1717]). Finally, the compromises between the Class and Fry's that narrowed the scope of the dispute were made without Intel's input or approval.

Under these circumstances, there is no basis to assess Intel a portion of the Special Master's fees in DM-5 and ordering such an assessment would set an unacceptable precedent, *i.e.*, compelling a party to subsidize a discovery dispute in which it had no involvement or control. Therefore, Intel respectfully requests that the Court reject Fry's proposed allocation of the fees.

¹ Although Intel has its own outstanding subpoena to Fry's, it has not moved to enforce the subpoena at this time.

² Intel did submit a letter regarding Fry's' *ex post* effort to modify the terms of the Master Protective Order. (*See* D.I. 461 in md-1717).

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Dated: January 11, 2008

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, W. Harding Drane, hereby certify that on January 11, 2008, the attached document was hand delivered to the following persons and was electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following and the document is available for viewing and downloading from CM/ECF:

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